

Real Estate Settlement Procedures Act Examination Procedures

INTRODUCTION

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 USC §2601 *et seq.*) (the “Act”) became effective on June 20, 1975. The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. The Act also protects borrowers against certain abusive practices, such as kickbacks, and places limitations upon the use of escrow accounts. The Department of Housing and Urban Development (HUD) promulgated Regulation X (24 CFR §3500), which implements RESPA. The National Affordable Housing Act of 1990 amended RESPA to require detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing. It also requires disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and what is paid out of the account by the servicer.

In October 1992, Congress amended RESPA to cover subordinate lien loans. HUD, however, decided not to enforce these provisions until Regulation X was amended to cover these loans. On February 10, 1994, Regulation X was amended to extend coverage to subordinate lien loans. The amendments were effective August 9, 1994. Exemptions from coverage of RESPA and Regulation X, set forth in section 3500.5(b), were effective March 14, 1994. Technical corrections and amendments to the rule were issued on March 30, 1994 and July 22, 1994.

On June 7, 1996, HUD amended Regulation X to clarify certain exemption provisions of RESPA, amend the controlled business disclosure requirements, and to address specific comments raised in the 1994 rule. These amendments became effective on October 7, 1996. Congress, when it enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996,¹ further amended RESPA to clarify certain definitions including “controlled business arrangement,” which was changed to “affiliated business arrangement.” The changes also reduced the disclosures under the mortgage servicing provisions of RESPA.

In 2008, HUD issued a RESPA Reform Rule (73 F.R. 68204, Nov. 17, 2008) that included substantive and technical changes to the existing RESPA regulations and different implementation dates for various provisions. Substantive changes included a standard Good Faith Estimate form and a revised HUD-1 Settlement Statement that are required as of January 1, 2010. Technical changes, including streamlined mortgage servicing disclosure language, elimination of outdated escrow account provisions, and a provision permitting an “average charge” to be listed on the Good Faith Estimate and HUD-1 Settlement Statement, took effect on January 16, 2009. In addition, HUD clarified that all disclosures required by RESPA are permitted to be provided electronically, in accordance with the Electronic Signatures in Global and National Commerce Act (ESIGN).

¹ Pub.L. 104-208, Div. A., Title II §2103 (c), Sept. 30, 1996.

COVERAGE (§3500.5(a))

RESPA is applicable to all "federally related mortgage loans," which are defined as:

Loans (other than temporary loans), including refinancings secured by a first or subordinate lien on residential real property upon which either:

- A 1-4 family structure is located or is to be constructed using proceeds of the loan (including individual units of condominiums and cooperatives); or
- A manufactured home is located or is to be constructed using proceeds of the loan;

And for which one of the following applies:

- Loans made by a lender², creditor³, dealer⁴;
- Loans made or insured by an agency of the federal government;
- Loans made in connection with a housing or urban development program administered by an agency of the federal government;
- Loans made and intended to be sold by the originating lender or creditor to FNMA; GNMA, or FHLMC (or its successor)⁵;
- Loans that are the subject of a home equity conversion mortgage or reverse mortgage issued by a lender or creditor subject to the regulation; or
- Installment sales contracts, land contracts or contracts for deeds on otherwise qualifying residential property if the contract is funded in whole or in part by proceeds of a loan made by a lender, dealer or creditor subject to the regulation.

EXEMPTIONS (§3500.5(b))

The following transactions are exempt from coverage:

- A loan on property of 25 acres or more (whether or not a dwelling is located on the property).
- A loan primarily for business, commercial or agricultural purposes (definition identical to Regulation Z, 12 CFR §226.3(a)(1)).
- A temporary loan, such as a construction loan. (The exemption does not apply if the loan is used as, or may be converted to, permanent financing by the same financial institution or is used to finance transfer of title to the first user of the property). If the lender issues a commitment for permanent financing, it is covered by the regulation.

²A lender includes financial institutions either regulated by, or whose deposits or accounts are insured by any agency of the federal government.

³A creditor is defined in section 103(f) of the Consumer Credit Protection Act (15 USC §1602(f)). RESPA covers any creditor that makes or invests in residential real estate loans aggregating more than \$1,000,000 per year.

⁴ Dealer is defined in Regulation X to mean a seller, contractor, or supplier of goods or services. Dealer loans are covered by RESPA if the obligations are to be assigned before the first payment is due to any lender or creditor otherwise subject to the regulation.

⁵ FNMA- Federal National Mortgage Association; GNMA- Government National Mortgage Association; FHLMC- Federal Home Loan Mortgage Corporation.

Any construction loan with a term of two years or more is covered by the regulation, unless it is made to a bona fide contractor. "Bridge" or "swing" loans are not covered by the regulation.

- A loan secured by vacant or unimproved property where no proceeds of the loan will be used to construct a 1-4 family residential structure. If the proceeds will be used to locate a manufactured home or construct a structure within two years from the date of settlement, the loan is covered.
- An assumption, unless the mortgage instruments require lender approval for the assumption and the lender approves the assumption.
- A renewal or modification where the original obligation (note) is still in effect but modified.
- A *bona fide* transfer of a loan obligation in the secondary market. (However, the mortgage servicing transfer disclosure requirements of 24 CFR 3500.21 still apply.) Mortgage broker transactions that are table funded (the loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds) are not secondary market transactions and, therefore, are covered by RESPA.

REQUIREMENTS

Special Information Booklet (§3500.6)

A loan originator⁶ is required to provide the borrower with a copy of the Special Information Booklet at the time a written application is submitted, or no later than three-business days after the application is received. If the application is denied before the end of the three business-day period, the loan originator is not required to provide the booklet. If the borrower uses a mortgage broker, the broker rather than the lender, must provide the booklet.

The booklet does not need to be provided for refinancing transactions, closed-end subordinate lien mortgage loans and reverse mortgage transactions, or for any other federally related mortgage loan not intended for the purchase of a one-to-four family residential property.

A loan originator that complies with Regulation Z (12 CFR §226.5b) for open-end home equity plans is deemed to have complied with this section.

⁶The RESPA Reform Rule added the definition of "loan originator" to the list of defined terms in the RESPA regulations. A "loan originator" is defined as a lender or mortgage broker.

Good Faith Estimate (GFE) of Settlement Costs (§3500.7)

Standard GFE Required

As of January 1, 2010, a loan originator is required to provide a consumer with the standard GFE form that is designed to allow borrowers to shop for a mortgage loan by comparing settlement costs and loan terms. (See GFE form at Appendix C to 24 C.F.R. Part 3500).

Overview of the Standard GFE

The first page of the GFE includes a summary of loan terms and a summary of estimated settlement charges. It also includes information about key dates such as when the interest rate for the loan quoted in the GFE expires and when the estimate for the settlement charges expires. The second page discloses settlement charges as subtotals for eleven categories of costs. The third page provides a table explaining which charges can change at settlement, a trade-off table showing the relationship between the interest rate and settlement charges, and a shopping chart to compare the costs and terms of loans offered by different originators.

GFE Application Requirements

- The loan originator must provide the standard GFE to the borrower within three business days of receipt of an application for a mortgage loan. A loan originator is not required to provide a GFE if before the end of the three-business-day period, the application is denied or the borrower withdraws the application.
- An application can be in writing or electronically submitted, including a written record of an oral application.
- A loan originator determines what information it needs to collect from a borrower and which of the collected information it will use in order to issue a GFE. Under the regulations, an “application” includes at least the following six pieces of information: 1) the borrower’s name; 2) the borrower’s gross monthly income; 3) the borrower’s Social Security number (*e.g.*, to enable the loan originator to obtain a credit report); 4) the property address; 5) an estimate of the value of the property; and 6) the mortgage loan amount sought. In addition, a loan originator may require the submission of any other information it deems necessary. A loan originator will be presumed to have relied on such information prior to issuing a GFE and cannot base a revision of a GFE on that information unless it changes or is later found to be inaccurate.
- While the loan originator may require the borrower to submit additional information beyond the six pieces of information listed above in order to issue a GFE, it cannot require, as a condition of providing the GFE, the submission of supplemental documentation to verify the information provided by the borrower on the application.

However, a loan originator is not prohibited from using its own sources to verify the information provided by the borrower prior to issuing the GFE. The loan originator can require borrowers to provide verification information after the GFE has been issued in order to complete final underwriting.

- For dealer loans, the loan originator is responsible for providing the GFE directly or ensuring that the dealer provides the GFE.
- For mortgage brokered loans, either the lender or the mortgage broker must provide a GFE within three business days after a mortgage broker receives either an application or information sufficient to complete an application. The lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided the GFE to the applicant, the lender is not required to provide an additional GFE.
- A loan originator is prohibited from charging a borrower any fee in order to obtain a GFE, unless the fee is limited to the cost of a credit report.

GFE Not Required for Open End Lines of Credit (§3500.7(h))

A loan originator that complies with Regulation Z (12 C.F.R. §226.5b) for open-end home equity plans is deemed to have complied with §3500.7.

Availability of GFE Terms (§3500.7(c))

Regulation X does not establish a minimum period of availability for which the interest rate must be honored. The loan originator must determine the expiration date for the interest rate of the loan stated on the GFE. In contrast, Regulation X requires that the estimated settlement charges and loan terms listed on the GFE be honored by the loan originator for at least ten business days from the date the GFE is provided. The period of availability for the estimated settlement charges and loan terms as well as the period of availability for the interest rate of the loan stated on the GFE must be listed on the GFE in the “Important dates” section of the form.

After the expiration date for the interest rate of the loan stated on the GFE, the interest rate and the other rate related charges, including the charge or credit for the interest rate chosen, the adjusted origination charges and the per diem interest can change until the interest rate is locked.

Key GFE Form Contents (§3500.7(d))

The loan originator must ensure that the required GFE form is completed in accordance with the Instructions set forth in Appendix C of 24 C.F.R. Part 3500.

First Page of GFE

- The first page of the GFE discloses identifying information such as the name and address of the “loan originator,” which includes the lender or the mortgage broker originating the loan. The “purpose” section indicates what the GFE is about and directs the borrower to the Truth in Lending disclosures and HUD’s website for more information. The borrower is informed that only the borrower can shop for the best loan and that the borrower should compare loan offers using the shopping chart on the third page of the GFE.
- The “Important dates” section requires the loan originator to state the expiration date for the interest rate for the loan provided in the GFE, as well as the expiration date for the estimate of other settlement charges and the loan terms not dependent upon the interest rate.
- While the interest rate stated on the GFE is not required to be honored for any specific period of time, the estimate for the other settlement charges and other loan terms must be honored for at least ten business days from when the GFE is provided.
- In addition, the form must state how many calendar days within which the borrower must go to settlement once the interest rate is locked (rate lock period). The form also requires disclosure of how many days prior to settlement the interest rate would have to be locked, if applicable.
- The “Summary of your loan” section requires disclosure of the loan amount; loan term; initial interest rate; initial monthly payment for principal, interest and any mortgage insurance; whether the interest rate can rise, and if so, the maximum rate to which it can rise over the life of the loan, and the period of time after which the interest rate can first change; whether the loan balance can rise if the payments are made on time and if so, the maximum amount to which it can rise over the life of the loan; whether the monthly amount owed for principal, interest and any mortgage insurance can rise even if payments are made on time, and if so, the maximum amount to which the monthly amount owed can ever rise over the life of the loan; whether the loan has a prepayment penalty, and if so, the maximum amount it could be; and whether the loan has a balloon payment, and if so, the amount of such payment and in how many years it will be due.
- The “Escrow account information” section requires the loan originator to indicate whether the loan does or does not have an escrow account to pay property taxes or other property related charges. In addition, this section also requires the disclosure of the monthly amount owed for principal, interest and any mortgage insurance.
- The bottom of the first page includes subtotals for the adjusted origination charges and charges for all other settlement charges listed on page two, along with the total estimated settlement charges.

Second Page of GFE

The second page of the GFE requires disclosure of all settlement charges. It provides for the estimate of total settlement costs in eleven categories discussed below. The adjusted origination charges are disclosed in “Block A” and all other settlement charges are disclosed in “Block B.” The amounts in the blocks are to be added to arrive at the “Total Estimated Settlement Charges,” which is required to be listed at the bottom of the page.

Disclosure of Adjusted Origination Charge (Block A)

Block A addresses disclosure of origination charges, which include all lender and mortgage broker charges. The “Your Adjusted Origination Charge” results from the subtraction of a “credit” from the “origination charge” or the addition of a “charge” to the “origination charge.”

- Block 1- The origination charges, which include lender processing and underwriting fees and any fees paid to a mortgage broker;

Origination Charge Note: This block requires the disclosure of all charges that all loan originators involved in the transaction will receive for originating the loan (excluding any charges for points). A loan originator may not separately charge any additional fees for getting the loan such as application, processing or underwriting fees. The amount in Block 1 is subject to zero tolerance, *i.e.*, the amount cannot change at settlement.

- Block 2- A “credit” or “charge” for the interest rate chosen;

Credit or Charge for the Interest Rate Chosen Note:

Transaction Involving a Mortgage Broker: For a transaction involving a mortgage broker,⁷ Block 2 requires disclosure of a “credit or charge” (points) for the specific interest rate chosen. The credit or charge for the specific interest rate chosen is the net payment to the mortgage broker (*i.e.*, the sum of all payments to the mortgage broker from the lender, including payments based on the loan amount, a flat rate or any other compensation, and in a table funded transaction, the loan amount less the price paid for the loan by the lender).

⁷ The RESPA Reform Rule changed the definition of “mortgage broker” to mean a person or entity (not an employee of a lender) that renders origination services and serves as an intermediary between a lender and a borrower in a transaction involving a federally related mortgage loan, including such person or entity that closes the loan in its own name and table funds the transaction. The definition will also apply to a loan correspondent approved under 24 CFR 202.8 for Federal Housing Administration (FHA programs.) The definition would also include an “exclusive agent” who is not an employee of the lender.

When the net payment to the mortgage broker from the lender is positive, there is a “credit” to the borrower and it is entered as a negative amount. For example, if the lender pays a yield spread premium to a mortgage broker for the loan set forth in the GFE, the payment must be disclosed as a “credit” to the borrower for the particular interest rate listed on the GFE (reflected on the GFE at Block 2, checkbox 2). The term “yield spread premium” is not featured on the GFE or the HUD-1 Settlement Statement.

Points paid by the borrower for the interest rate chosen must be disclosed as a “charge” (reflected on the GFE at Block 2, third checkbox). A loan cannot include both a charge (points) and a credit (yield spread premium).

Transaction Not Involving a Mortgage Broker. For a transaction without a mortgage broker, a lender may choose not to separately disclose any credit or charge for the interest rate chosen for the loan in the GFE. If the lender does not include any credit or charge in Block 2, it must check the first checkbox in Block 2 indicating that, “The credit or charge for the interest rate you have chosen is included in ‘our origination charge’ above.” Only one of the boxes in Block 2 may be checked, as a credit and charge cannot occur together in the same transaction.

Disclosure of Charges for All Other Settlement Services (Block B)

Block B is the sum of charges for all settlement services other than the origination charges.

- Block 3 - Required services by providers selected by the lender such as appraisal and flood certification fees;
- Block 4 - Title service fees and the cost of lender’s title insurance;
- Block 5 - Owner’s title insurance;
- Block 6 - Other required services for which the consumer may shop;
- Block 7 - Government recording charges;
- Block 8 - Transfer tax charges;
- Block 9 - Initial deposit for escrow account;
- Block 10 - Daily interest charges; and
- Block 11 - Homeowner’s insurance charges.

Third Page of GFE

The third page of the GFE includes the following information:

- a tolerance chart identifying the charges that can change at settlement (see discussion on tolerances below);
- a trade-off table which requires the loan originator to provide information on the loan described in the GFE and at the loan originator's option, information about alternative loans (one with lower settlement charges but a higher interest rate and one with a lower interest rate but higher settlement charges);
- a shopping chart that allows the consumer to fill in loan terms and settlement charges from other lenders or brokers to use to compare loans; and
- language indicating that some lenders may sell the loan after settlement but that any fees the lender receives in the future cannot change the borrower's loan or the settlement charges.

Tolerances on Settlement Costs (§3500.7(e) and (i))

The RESPA Reform Rule established “tolerances” or limits on the amount actual settlement charges can vary at closing from the amounts stated on the GFE. The rule established three categories of settlement charges and each category has different tolerances. If, at settlement, the charges exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days after settlement.

Tolerance Categories

- ***Zero tolerance category.*** This category of fees is subject to a zero tolerance standard. The fees estimated on the GFE may not be exceeded at closing. These fees include:
 - the loan originator's own origination charge, including processing and underwriting fees;
 - the credit or charge for the interest rate chosen (*i.e.*, yield spread premium or discount points) while the interest rate is locked;
 - the adjusted origination charge while the interest rate is locked; and
 - state/local property transfer taxes.
- ***Ten percent tolerance category.*** For this category of fees, while each individual fee may increase or decrease, the sum of the charges at settlement may not be greater

than 10 percent above the sum of the amounts included on the GFE. This category includes fees for:

- loan originator required settlement services, where the loan originator selects the third-party settlement service provider;
 - loan originator required services, title services, required title insurance and owner's title insurance when the borrower selects a third-party provider identified by the loan originator; and
 - government recording charges.
- ***No tolerance category.*** The final category of fees is not subject to any tolerance restriction. The amounts charged for the following settlement services, included on the GFE, can change at settlement:
 - loan originator required services, where the borrower selects his or her own third-party provider;
 - title services, lender's title insurance and owner's title insurance, where the borrower selects his or her own provider;
 - initial escrow deposit;
 - daily interest charges; and
 - homeowner's insurance.

Identification of Third Party Settlement Service Providers

When the loan originator permits a borrower to shop for one or more required third-party settlement services and select the settlement service provider for such required services, the loan originator must list in the relevant block on page 2 of the GFE the settlement service and the estimated charge to be paid to the provider of each required service. In addition, the loan originator must provide the borrower with a written list of settlement service providers for those required services on a separate sheet of paper at the time the GFE is provided.

Binding GFE (§3500.7(f))

The loan originator is bound, within the tolerances provided, to the settlement charges and terms listed on the GFE provided to the borrower, unless a new GFE is provided prior to settlement (see discussion below on changed circumstances). This also means that if a lender accepts a GFE issued by a mortgage broker, the lender is subject to the loan terms and settlement charges listed in the GFE, unless a new GFE is issued prior to settlement.

Changed Circumstances (§3500. 2(b); §3500.7(f)(1) and (f)(2))

Changed circumstances are defined as:

- (1) acts of God, war, disaster or other emergency;
- (2) information particular to the borrower or transaction that was relied on in providing the GFE that changes or is found to be inaccurate after the GFE has been provided;
- (3) new information particular to the borrower or transaction that was not relied on in providing the GFE; or
- (4) other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

Changed circumstances do not include the borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided. In addition, market price fluctuations by themselves do not constitute changed circumstances.

Changed circumstances affecting *settlement costs* are those circumstances that result in increased costs for settlement services such that the charges at settlement would exceed the tolerances or limits on those charges established by the regulations.

Changed circumstances affecting the *loan* are those circumstances that affect the borrower's eligibility for the loan. For example, if underwriting and verification indicate that the borrower is ineligible for the loan provided in the GFE, the loan originator would no longer be bound by the original GFE. In such cases, if a new GFE is to be provided, the loan originator must do so within three business days of receiving information sufficient to establish changed circumstances. The loan originator must document the reason that a new GFE was provided and must retain documentation of any reasons for providing a new GFE for no less than three years after settlement.

None of the information collected by the loan originator prior to issuing the GFE may later become the basis for a "changed circumstance" upon which it may offer a revised GFE, unless: 1) it can demonstrate that there was a change in the particular information; or 2) that the information was inaccurate; or 3) that it did not rely on that particular information in issuing the GFE. A loan originator has the burden of demonstrating nonreliance on the collected information, but may do so through various means, including through a documented record in the underwriting file or an established policy of relying on a more limited set of information in providing GFEs.

If a loan originator issues a revised GFE based on information previously collected in issuing the original GFE and "changed circumstances," it must document the reasons for

issuing the revised GFE, such as its nonreliance on such information or the inaccuracy of such information.

Borrower Requested Changes (§3500.7(f)(3))

If a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is provided, the loan originator must do so within three business days of the borrower's request.

Expiration of Original GFE (§3500.7(f)(4))

If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time provided by the loan originator, the loan originator is no longer bound by the GFE.

Interest Rate Dependent Charges and Terms (§3500.7(f)(5))

If the interest rate has not been locked by the borrower, or a locked interest rate has expired, all interest rate-dependent charges on the GFE are subject to change. The charges that may change include the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate. However, the loan originator's origination charge (listed in Block 1 of page 2 of the GFE) is not subject to change, even if the interest rate floats, unless there is another changed circumstance or borrower-requested change.

If the borrower later locks the interest rate, a new GFE must be provided showing the revised interest rate dependent charges and terms. All other charges and terms must remain the same as on the original GFE, unless changed circumstances or borrower-requested changes result in increased costs for settlement services or affect the borrower's eligibility for the specific loan terms identified in the original GFE.

New Home Purchases (§3500.7(f)(6))

In transactions involving new home purchases, where settlement is expected to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If the loan originator does not provide such a disclosure, it cannot issue a revised GFE except as otherwise provided in Regulation X.

Volume Based Discounts

The RESPA Reform Rule did not formally address the legality of volume based discounts. However, HUD indicated in the preamble to the rule that discounts negotiated between loan originators and other settlement service providers, where the discount is ultimately passed on to the borrower in full, is not, depending on the circumstances of a particular transaction, a violation of Section 8 of RESPA.⁸

Uniform Settlement Statement (HUD-1 or HUD-1A) (§3500.8)

Section 4 of RESPA requires the person conducting the settlement (settlement agent) to provide the borrower with a HUD-1 Settlement Statement at or before settlement that clearly itemizes all charges imposed on the buyer and the seller in connection with the settlement. The RESPA Reform rule included a revised HUD-1/1A Settlement Statement form that is required as of January 1, 2010. The HUD-1 is used for transactions in which there is a borrower and seller. For transactions in which there is a borrower and no seller (refinancings and subordinate lien loans), the HUD-1 may be completed by using the borrower's side of the settlement statement. Alternatively, the HUD-1A may be used. However, no settlement statement is required for home equity plans subject to the Truth in Lending Act and Regulation Z. Appendix A contains the instructions for completing the forms.

Key RESPA Reform Enhancements to the HUD-1/1A Settlement Statement

While the RESPA Reform Rule did not include any substantive changes to the first page of the HUD-1/1A form, there were changes to the second page of the form to facilitate comparison between the HUD-1/1A and the GFE. Each designated line on the second page of the revised HUD-1/1A includes a reference to the relevant line from the GFE.

With respect to disclosure of “no cost” loans where “no cost” refers only to the loan originator’s fees (see Section L, subsection 800 of the HUD-1 form), the amounts shown for the “origination charge” and the “credit or charge for the interest rate chosen” should offset, so that the “adjusted origination charge” is zero.

In the case of a “no cost” loan where “no cost” encompasses loan originator and third party fees, all third party fees must be itemized and listed in the borrower’s column on the HUD-1/1A. These itemized charges must be offset with a negative adjusted origination charge (Line 803) and recorded in the columns.

To further facilitate comparability between the forms, the revised HUD-1 includes a new third page (second page of the HUD-1A) that allows borrowers to compare the loan terms and settlement charges listed on the GFE with the terms and charges listed on the closing statement. The first half of the third page includes a comparison chart that sets forth the settlement charges from the GFE and the settlement charges from the HUD-1 to allow the

⁸ 73 Fed. Reg. 68204, 68232 (November 17, 2008).

borrower to easily determine whether the settlement charges exceed the charges stated on the GFE. If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded. A borrower will be deemed to have received timely reimbursement if the financial institution delivers or places the payment in the mail within 30 calendar days after settlement.

Inadvertent or technical errors on the settlement statement are not deemed to be a violation of Section 4 of RESPA, if a revised HUD-1/1A is provided to the borrower within 30 calendar days after settlement.

The second half of the third page sets forth the loan terms for the loan received at settlement in a format that reflects the summary of loan terms on the first page of the GFE, but with additional loan related information that would be available at closing. The note at the bottom of the page indicates that the borrower should contact the lender if the borrower has questions about the settlement charges or loan terms listed on the form.

Section 3500.8(b) and the instructions for completing the HUD-1/1A Settlement Statement provide that the loan originator shall transmit sufficient information to the settlement agent to allow the settlement agent to complete the “loan terms” section. The loan originator must provide the information in a format that permits the settlement agent to enter the information in the appropriate spaces on the HUD-1/1A, without having to refer to the loan documents.

Average Charge Permitted

As of January 16, 2009, an average charge may be stated on the HUD-1/1A if such average charge is computed in accordance with §3500.8 (b)(2). All settlement service providers, including loan originators, are permitted to list the average charge for a settlement service on the HUD-1/1A Settlement Statement (and on the GFE) rather than the exact cost for that service.

The method of determining the average charge is left up to the settlement service provider. The average charge may be used as the charge for any third party vendor charge, not for the provider’s own internal charges. The average charge also cannot be used where the charge is based on the loan amount or the value of the property.

The average charge may be used for any third party settlement service, provided that the total amounts received from borrowers for that service for a particular class of transactions do not exceed the total amounts paid to providers of that service for that class of transactions. A class of transactions may be defined based on the period of time, type of loan and geographic area. If an average charge is used in any class of transactions defined by the loan originator, then the loan originator must use the same average charge for every transaction within that class. The average charge must be recalculated at least every six months.

A settlement service provider that uses an average charge for a particular service must maintain all documents that were used to calculate the average charge for at least three years after any settlement in which the average charge was used.

Printing and Duplication of the Settlement Statement (§3500.9)

Financial institutions have numerous options for layout and format in reproducing the HUD-1 and HUD-1A that do not require prior HUD approval such as size of pages; tint or color of pages; size and style of type or print; spacing; printing on separate pages, front and back of a single page or on one continuous page; use of multi-copy tear-out sets; printing on rolls for computer purposes; addition of signature lines; and translation into any language. Other changes may be made only with the approval of the Secretary of Housing and Urban Development.

One-Day Advance Inspection of the Settlement Statement (§3500.10)

Upon request by the borrower, the HUD-1 or HUD-1A must be completed and made available for inspection during the business day immediately preceding the day of settlement, setting forth those items known at that time by the person conducting the closing.

Delivery (§3500.10(a) and (b))

The completed HUD-1 or HUD-1A must be mailed or delivered to the borrower, the seller (if there is one), the lender (if the lender is not the settlement agent), and/or their agents at or before settlement. However, the borrower may waive the right of delivery by executing a written waiver at or before settlement. The HUD-1 or HUD-1A shall be mailed or delivered as soon as practicable after settlement if the borrower or borrower's agent does not attend the settlement.

Retention (§3500.10(e))

A lender must retain each completed HUD-1 or HUD-1A and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. If the loan is transferred, the lender shall provide a copy of the HUD-1 or HUD-1A to the owner or servicer of the mortgage as part of the transfer. The owner or servicer shall retain the HUD-1 or HUD-1A for the remainder of the five-year period.

PROHIBITION OF FEES FOR PREPARING FEDERAL DISCLOSURES (§3500.12)

For loans subject to RESPA, no fee may be charged for preparing the Settlement Statement or the Escrow Account statement or any disclosures required by the Truth in Lending Act.

PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES (§3500.14)

Any person who gives or receives a fee or a thing of value (payments, commissions, fees, gifts or special privileges) for the referral of settlement business is in violation of Section 8 of RESPA. Payments in excess of the reasonable value of goods provided or services rendered are considered unearned fees. Appendix B of Regulation X provides guidance on the meaning and coverage of the prohibition against kickbacks and unearned fees.

Penalties and Liabilities

Civil and criminal liability is provided for violating the prohibition against kickbacks and unearned fees including:

- Civil liability to the parties affected, equal to three times the amount of any charge paid for such settlement service.
- The possibility that the costs associated with any court proceeding together with reasonable attorney's fees could be recovered.
- A fine of not more than \$10,000 or imprisonment for not more than one year or both.

AFFILIATED BUSINESS ARRANGEMENTS (§3500.15)

If a loan originator has either an affiliate relationship or a direct or beneficial ownership interest of more than 1% in a provider of settlement services and the loan originator directly or indirectly refers business to the provider it is an affiliated business arrangement. An affiliated business arrangement is not a violation of section 8 of RESPA and of §3500.14 of Regulation X, if the following conditions are satisfied:

Prior to the referral, the person making each referral has provided to each person whose business is referred an Affiliated Business Arrangement Disclosure Statement (Appendix D of Regulation X). This disclosure shall specify the following:

- The nature of the relationship (explaining the ownership and financial interest) between the provider and the loan originator; and
- The estimated charge or range of charges generally made by such provider.

This disclosure must be provided on a separate piece of paper either at the time of loan application, or with the GFE, or at the time of the referral.

The loan originator may not require the use of such a provider, with the following exceptions: the institution may require a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency or real estate appraiser chosen by the institution to represent its interest. The loan originator may only receive a return on ownership or franchise interest or payment otherwise permitted by RESPA.

TITLE COMPANIES (§3500.16)

Sellers that hold legal title to the property being sold are prohibited from requiring borrowers, either directly or indirectly, as a condition to selling the property, to use a particular title company.

Civil liability for violating the provision that a financial institution (seller) cannot require a borrower to use a particular title company is an amount equal to three times all charges made for such title insurance.

ESCROW ACCOUNTS (§3500.17)

On October 26, 1994, HUD issued its final rule changing the accounting method for escrow accounts, which was originally effective April 24, 1995. The rule establishes a national standard accounting method, known as aggregate accounting. Existing escrow accounts were allowed a three-year phase-in period to convert to the aggregate accounting method. The final rule also established formats and procedures for initial and annual escrow account statements (The 2008 RESPA Reform Rule eliminated provisions in §3500.17 that related to the phase-in period for aggregate accounting, effective January 16, 2009.)

The amount of escrow funds that can be collected at settlement or upon creation of an escrow account is restricted to an amount sufficient to pay charges, such as taxes and insurance, that are attributable to the period from the date such payments were last paid until the initial payment date. Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth of the total annual escrow payments that the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth of the estimated total annual payments from the account.

Escrow Account Analysis (§3500.17(c)(2) and (3) and 3500.17(k))

Before establishing an escrow account, a servicer must conduct an analysis to determine the periodic payments and the amount to be deposited. The servicer shall use an escrow disbursement date that is on or before the deadline to avoid a penalty and may make annual lump sum payments to take advantage of a discount.

Transfer of Servicing (§3500.17(e))

If the new servicer changes either the monthly payment amount or the accounting method used by the old servicer, then it must provide the borrower with an initial escrow account statement within 60 days of the date of transfer. When the new servicer provides an initial escrow account statement, it shall use the effective date of the transfer of servicing to establish the new escrow account computation year. In addition, if the new servicer retains the monthly payments and accounting method used by the old servicer, then the new servicer may continue to use the same

computation year established by the old servicer or it may choose a different one, using a short year statement.

Shortages, Surpluses, and Deficiency Requirements (§3500.17(f))

The servicer shall conduct an annual escrow account analysis to determine whether a surplus, shortage, or deficiency exists as defined under Section 3500.17(b).

If the escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to \$50. If the surplus is less than \$50, the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments. These provisions apply as long as the borrower's mortgage payment is current at the time of the escrow account analysis.

If the escrow account analysis discloses a shortage of less than one month's escrow payments, then the servicer has three possible courses of action:

- the servicer may allow the shortage to exist and do nothing to change it;
- the servicer may require the borrower to repay the shortage amount within 30 days; or,
- the servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

If the shortage is more than or equal to one month's escrow payment, then the servicer has two possible courses of action:

- the servicer may allow the shortage to exist and do nothing to change it; or
- the servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

If the escrow account analysis discloses a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

If the deficiency is less than one month's escrow account payment, then the servicer:

- may allow the deficiency to exist and do nothing to change it;
- may require the borrower to repay the deficiency within 30 days; or
- may require the borrower to repay the deficiency in two or more equal monthly payments.

If the deficiency is greater than or equal to one month's escrow payment, the servicer may allow

the deficiency to exist and do nothing to change it, or require the borrower to repay the deficiency in two or more equal monthly payments.

These provisions apply as long as the borrower's mortgage payment is current at the time of the escrow account analysis.

A servicer must notify the borrower at least once during the escrow account computation year if a shortage or deficiency exists in the account.

Initial Escrow Account Statement (§3500.17(g))

After analyzing each escrow account, the servicer must submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

The initial escrow account statement must include the monthly mortgage payment; the portion going to escrow; itemize estimated taxes, insurance premiums, and other charges; the anticipated disbursement dates of those charges; the amount of the cushion; and a trial running balance.

Annual Escrow Account Statement (§3500.17(i))

A servicer shall submit to the borrower an annual statement for each escrow account within 30 days of the completion of the computation year. The servicer must conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

The annual escrow account statements must contain the account history; projections for the next year; current mortgage payment and portion going to escrow; amount of past year's monthly mortgage payment and portion that went into the escrow account; total amount paid into the escrow account during the past year; amount paid from the account for taxes, insurance premiums, and other charges; balance at the end of the period; explanation of how the surplus, shortage, or deficiency is being handled; and, if applicable, the reasons why the estimated low monthly balance was not reached.

Short-year Statements (§3500.17(i)(4))

Short-year statements can be issued to end the escrow account computation year and establish the beginning date of the new computation year. Short-year statements may be provided upon the transfer of servicing and are required upon loan payoff. The statement is due to the borrower within 60 days after receiving the pay-off funds.

Timely Payments (§3500.17(k))

The servicer shall pay escrow disbursements by the disbursement date. In calculating the disbursement date, the servicer must use a date on or before the deadline to avoid a penalty and may make annual lump sum payments to take advantage of a discount.

Record Keeping (§3500.17(l))

Each servicer shall keep records that are easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer shall maintain the records for each escrow account for at least five years after the servicer last serviced the account.

Penalties (§3500.17(m))

Failure to provide an initial or annual escrow account statement to a borrower can result in the financial institution or the servicer being assessed a civil penalty of \$75 for each such failure, with the total for any 12 month period not to exceed \$130,000. If the violation is due to intentional disregard, the penalty is \$110 for each failure without any annual cap on liability.

MORTGAGE SERVICING TRANSFER DISCLOSURES (§3500.21)

The disclosures related to the transfer of mortgage servicing are required for first mortgage liens, including all refinancing transactions. Subordinate lien loans and open-end lines of credit (home equity plans), that are covered under the TILA and Regulation Z are exempt from this section.

A financial institution that receives an application for a federally related mortgage loan is required to provide the servicing disclosure statement to the borrower within three business days after receipt of the application. The 2008 RESPA Reform Rule included a technical revision to the mortgage servicing disclosure statement in Appendix MS-1 to Regulation X, effective January 16, 2009. The rule streamlined the initial servicing disclosure statement language to be consistent with statutory changes.

When a federally related mortgage loan is assigned, sold or transferred, the transferor (present servicer) must provide a disclosure at least 15 days before the effective date of the transfer. A transfer of servicing notice from the transferee (new servicer) must be provided not more than 15 days after the effective date of the transfer. Both notices may be combined into one notice if delivered to the borrower at least 15 days before the effective date of the transfer. The disclosure must include:

- The effective date of the transfer.
- The name, address for consumer inquiries, and toll-free or collect-call telephone number of the transferee servicer.
- A toll-free or collect-call telephone number for an employee by the transferor servicer that can be contacted by the borrower to answer servicing questions.
- The date on which the transferor servicer will cease accepting payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. The dates must either be the same or consecutive dates.
- Any information concerning the effect of the transfer on the availability of optional insurance and any action the borrower must take to maintain coverage.
- A statement that the transfer does not affect the terms or conditions of the mortgage (except as related to servicing).

- A statement of the borrower's rights in connection with complaint resolution.

During the 60-day period beginning on the date of transfer, no late fee can be imposed on a borrower who has made the payment to the wrong servicer.

The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

- Transfers between affiliates;
- Transfers resulting from mergers or acquisitions of service or subservicers; and
- Transfers between master servicers, when the subservicer remains the same.

Servicers Must Respond to Borrower's Inquiries (§3500.21(e))

A financial institution servicer must respond to a borrower's qualified written request for information relating to the servicing of the loan and take appropriate action within established time frames after receipt of the inquiry. Generally, the financial institution must provide written acknowledgment within 20 business days, and take certain specified actions within 60 business days of receipt of such inquiry. The written inquiry must include the name and account number of the borrower and the reasons the borrower believes the account is in error.

During the 60 business day period following receipt of a qualified written request from a borrower relating to a payment, a financial institution may not provide adverse information regarding any payment that is the subject of the qualified written request to any consumer reporting agency.

Relationship to State Law (§3500.21(h) and 12 U.S.C. 2616)

Financial institutions complying with the mortgage servicing transfer disclosure requirements of RESPA are considered to have complied with any State law or regulation requiring notice to a borrower at the time of application or transfer of a mortgage.

Other state laws shall not be affected by the act, except to the extent that they are inconsistent and then only to the extent of the inconsistency. The Secretary of Housing and Urban Development is authorized, after consulting with the appropriate federal agencies, to determine whether such inconsistencies exist.

Penalties and Liabilities (§3500.21(f))

Failure to comply with any provision of section 3500.21 will result in actual damages, and where there is a pattern or practice of noncompliance any additional damages in an amount not to exceed \$1,000. In class action cases, each borrower may receive actual damages and additional damages, as the court allows, up to \$1,000 for each member of the class, except that the total

amount of damages in any class action may not exceed the lesser of \$500,000 or one percent of the net worth of the servicer. In addition, costs of the action and attorney fees may be awarded in any successful action.

REAL ESTATE SETTLEMENT PROCEDURES ACT

Examination Objectives

1. To determine if the financial institution has established procedures to ensure compliance with RESPA.
2. To determine that the financial institution does not engage in any practices prohibited by RESPA, such as kickbacks, payment or receipt of referral fees or unearned fees, or excessive escrow assessments.
3. To determine if the Special Information Booklet, Good Faith Estimate, Uniform Settlement Statement (Form HUD-1 or HUD 1A), mortgage servicing transfer disclosures, and other required disclosures are in a form that complies with Regulation X, are properly completed, and provided to borrowers within prescribed time periods.
4. To determine if the institution is submitting the required initial and annual escrow account statements to borrowers as applicable, and complying with established limitations on escrow account arrangements.
5. To determine whether the institution is responding to borrower inquiries for information relating to the servicing of their loans in compliance with the provisions of RESPA.

REAL ESTATE SETTLEMENT PROCEDURES ACT

Examination Procedures

If the financial institution has loans covered by the act, determine whether the institution's policies, practices, and procedures are in compliance.

1. Review the types of loans covered by RESPA and applicable exemptions.
2. Review the Special Information Booklet, Good Faith Estimate (GFE) form, Uniform Settlement Statement (Form HUD-1 or HUD-1A), mortgage servicing transfer disclosure forms, and affiliated business arrangement disclosure form for compliance with the requirements of Regulation X. Review standardized and model forms in the appendices to the regulation.
3. If electronic disclosures are provided, determine whether the institution has policies and procedures to provide electronic delivery in accordance with the Electronic Signatures in Global and National Commerce Act (ESIGN).
4. Review written loan policies and operating procedures in connection with federally related mortgage loans and discuss them with institution personnel.
 - a. Determine whether the financial institution has policies and procedures concerning what information will be collected from applicants in connection with issuing a GFE, and what information will be relied on to issue a GFE.
 - b. Determine whether the financial institution has policies and procedures concerning provision of a revised GFE in the event of changed circumstances.
 - c. Determine whether the financial institution has policies and procedures concerning provision of a revised GFE for transactions involving new home purchases.
 - d. Determine whether the financial institution has policies and procedures to cure a tolerance violation by reimbursing the borrower the amount by which the tolerance was exceeded within 30 calendar days from date of settlement.
 - e. Determine whether the financial institution has policies and procedures to cure a technical or inadvertent error on the HUD-1/1A by providing a revised settlement statement to the borrower within 30 calendar days of settlement.
5. Interview mortgage lending personnel to determine:
 - a. Identity of persons or entities referring federally related mortgage loan business;
 - b. The nature of services provided by referral sources, if any;
 - c. Settlement service providers used by the institution;

- d. When the Special Information Booklet is given;
 - e. The timing of the good faith estimate and how fee information is determined;
 - f. Any providers whose services are required by the institution;
 - g. How borrower inquiries regarding loan servicing are handled and within what time frames; and
 - h. Whether escrow arrangements exist on mortgage loans.
6. Assess the overall level of knowledge and understanding of mortgage lending personnel.

Special Information Booklet

7. Determine through discussion with management and review of credit files whether the Special Information Booklet, if required, is provided within 3 business days after the financial institution or broker receives a written application for a loan. [§3500.6(a)(1)].

Good Faith Estimate

8. Determine whether the financial institution provides a good faith estimate of charges for settlement services, if required, within three business days after receipt of a written application. [§3500.7(a)].
9. Review the GFE to determine if it appears exactly as set forth in Appendix C to Part 3500.
10. Review a sample of loan files that include GFEs to determine the following:
- a. Whether the financial institution followed GFE application requirements.
 - b. If the institution provided a revised GFE to the applicant due to changed circumstances, determine whether institution followed regulatory requirements for issuing a revised GFE due to changed circumstances.
 - c. Whether the GFE was completed as required in the regulations and instructions (§3500.7 and Appendix C to Part 3500) and whether it included the following information:
 - (i) Interest rate expiration date,
 - (ii) Settlement charges expiration date,
 - (iii) Rate lock period,
 - (iv) Number of days before settlement the interest rate must be locked, if applicable,

- (v) Summary of loan information,
 - (vi) Escrow account information,
 - (vii) Estimates for settlement charges, and
 - (viii) Left hand column on trade-off table completed for loan in the GFE.
- d. Whether, for no cost loans, all third party fees paid by the financial institution are itemized and listed in the appropriate blocks on the second page of the GFE.
 - e. Whether a separate sheet was provided with the GFE that identifies the settlement service providers for the services listed on the GFE.

Uniform Settlement Statement Form (HUD-1 and HUD-1A)

- 11. Using the same sample of loan files as used for the review of the GFE, review the Uniform Settlement Statement (HUD-1 or HUD-1A, as appropriate) [§3500.8 and Appendix A to Part 3500] to determine whether:
 - a. Charges are properly itemized in accordance with the Instructions for completion of the HUD-1 or HUD-1A (Appendix A to Part 3500).
 - b. All charges paid by the borrower and the seller are itemized and include the name of the recipient. [§3500.8(b), Appendix A].
 - c. Average charges for settlement services are calculated in accordance with section 3500.8(b)(2).
 - d. Charges required by the financial institution but paid outside of closing are itemized on the settlement statement, marked as "paid outside of closing" or "P.O.C.," but not included in cost totals. [§3500.8(b); Appendix A].
- 12. If the financial institution conducts the settlement, determine whether:
 - a. The borrower, upon request, is allowed to inspect the HUD-1 or HUD-1A at least one business day prior to settlement. [§3500.10(a)].
 - b. The HUD-1 or HUD-1A is provided to the borrower and seller at or before settlement (except where the borrower has waived the right to delivery and in the case of exempt transactions). [§3500.10(b)].
 - c. In cases where the right to delivery is waived or the transaction is exempt, the HUD-1/1A is mailed as soon as practicable after settlement. [§3500.10(b),(c), and (d)].
- 13. Determine whether, in the case of an inadvertent or technical error on the HUD-1 or HUD-1A, the financial institution provides a revised HUD-1/1A to the borrower within 30 calendar days after settlement. [§3500.8(c)].

14. Review the HUD-1 or HUD-1A form prepared in connection with each GFE reviewed to determine if the amount stated for any itemized service exceeds the amount shown on the GFE for that service. If the amount stated on the HUD-1 exceeds the amount shown on the GFE and such overcharge violates the tolerance for that category of settlement services, determine whether the financial institution cured the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded at settlement or within 30 calendar days from date of settlement. [§3500.7(i)].
15. Determine whether HUD-1 and HUD-1A forms are retained for five years. If the financial institution disposes of its interest in the mortgage and does not service the loan, determine whether the HUD-1 or HUD-1A form is transferred to the new asset owner with the loan file. [§3500.10(e)].

Mortgage Servicing Transfer Disclosure

16. Determine whether the disclosure form is substantially in conformity with the model disclosure in Appendix MS-1 to Part 3500.
17. Determine that the mortgage servicing transfer disclosure was provided to the applicant within three business days after receipt of the application.[§3500.21(c)].
18. Determine that the disclosure states whether the loan may be assigned, sold, or transferred while the loan is outstanding. [§3500.21(b)(2)].

Notice to Borrower of Transfer of Mortgage Servicing

19. Determine whether the institution has transferred or received mortgage servicing rights.
20. If it has transferred servicing rights, determine whether notice to the borrower was given at least 15 days prior to the transfer. [§3500.21(d)(2)].
21. If it has received servicing rights, determine whether notice was given to the borrower within 15 days after the transfer. [§3500.21(d)(2)].
22. Determine whether the notice by transferor and transferee includes the following information. [§3500.21(d)(3)]. Sample language for the notice of transfer is contained in Appendix MS-2 to Part 3500.
 - a. The effective date of the transfer;
 - b. A statement that the transfer does not affect the terms or conditions of the mortgage, other than terms directly related to its servicing;
 - c. The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or

collect call telephone number for an employee or department of the transferee servicer;

- d. A toll-free or collect call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;
- e. The date on which the present servicer will cease accepting payments and the date the new servicer will begin accepting payments relating to the transferred loan;
- f. Any information concerning the effect of the transfer on the availability or terms of optional insurance and any action the borrower must take to maintain coverage; and
- g. A statement of the borrowers rights in connection with complaint resolution (Appendix MS-2 to Part 3500.)

Responsibilities of Servicer

- 23. Through a review of late notices or otherwise if the transferor servicer received payment, determine that no late fees have been imposed and that no payments have been treated as late within 60 days following a transfer of servicing. [§3500.21(d)(5)].
- 24. Determine that the institution, as loan servicer for mortgage loans and refinancings subject to RESPA, responds to borrower inquiries relating to these loans as prescribed in the regulation, including:
 - a. Provides the notice of receipt of inquiry for qualified written requests from borrowers within 20-business days (unless the action requested is taken within that period and the borrower is notified in writing of that action). [§3500.21(e)(1)].
 - b. Provides written notification of the corrections taken on the account, or statement of the reasons the account is correct or explanation why the information requested is unavailable not later than 60-business days after receipt of the qualified written request from the borrower. [§3500.21(e)(3)].
 - c. Determine that the institution does not provide information to any consumer reporting agency regarding overdue payment when investigating a qualified written request from borrower regarding disputed payments during this 60-business day period. [§3500.21(e)(4)(I)].

No Fees for RESPA Disclosures

- 25. a. Determine whether the financial institution charges a fee specifically for preparing and distributing the HUD-1 forms, escrow statements or documents required under the Truth in Lending Act. [§3500.12].

- b. If any fee is charged before providing a GFE, determine whether such fee is limited to the cost of a credit report. [§3500.7(a)(4)].

Purchase of Title Insurance

- 26. When the financial institution owns the property being sold, determine whether it requires that title insurance be purchased from a particular company. [§3500.16].

Payment or Receipt of Referral or Unearned Fees

- 27. Determine if management is aware of the prohibitions against payment or receipt of kickbacks and unearned fees. [RESPA §8; §3500.14].
- 28. Through interviews with institution management and personnel, file reviews, review of good faith estimates, and HUD-1 and HUD-1A, determine if federally related mortgage loan transactions are referred by brokers, affiliates, or other parties. Identify those parties.

Also, identify persons or entities to which the institution refers services in connection with a federally related mortgage transaction.

- a. Identify the types of services rendered by the broker, affiliate, or service provider.
- b. By a review of the institution's general ledger or otherwise, determine if fees were paid to the institution or any parties identified.
- c. Confirm that any fees paid to the broker, affiliate, service provider, or other party meet the requirements of section 3500.14(g) and are for goods or facilities actually furnished or services actually performed. This includes payments to an affiliate or the affiliate's employees.

Affiliated Business Arrangements

- 29. Determine from the HUD-1 or HUD-1A and from interviews with institution management if the institution referred a borrower to a settlement service provider.
- 30. If the financial institution referred a borrower to an affiliated settlement service provider, determine whether the Affiliated Business Arrangement disclosure statement (Appendix D to Part 3500) was provided as required by section 3500.15(b)(1).
- 31. Other than an attorney, credit reporting agency, or appraiser representing the lender, if the financial institution referred a borrower to a settlement service provider, determine whether the institution required the use of the provider. [§3500.15(b)(2)].

Escrow Accounts

If the institution maintains escrow accounts in connection with a federally related mortgage loan, complete the following procedures.

32. Determine whether the institution performed an initial escrow analysis [§3500.17(c)(2)] and provided the initial escrow statement required by section 3500.17(g). The statement must contain the following:
 - a. Amount of monthly payment
 - b. Portion of the monthly payment being placed in escrow
 - c. Charges to be paid from the escrow account during the first 12 months
 - d. Disbursement dates
 - e. Amount of cushion
33. Determine if the statement was given to the borrower at settlement or within 45 days after the escrow account was established. This statement may be incorporated into the HUD-1 statement. [§3500.17(g)(1) and (2)].
34. Determine whether the institution performs an annual analysis of the escrow account. [§3500.17(c)(3) and (7), and 3500.17(i)].
35. Determine whether the annual escrow account statement is provided to the borrower within 30 days of the end of the computation year. [§3500.17(i)].
36. Determine if the annual escrow statement contains the following:
 - a. Amount of monthly mortgage payment and portion that went placed in escrow;
 - b. Amount of past year's monthly mortgage payment and portion that went into escrow;
 - c. Total amount paid into escrow during the past computation year;
 - d. Total amount paid out of escrow account during same period for taxes, insurance, and other charges;
 - e. Balance in the escrow account at the end of the period;
 - f. How a surplus, shortage, or deficiency is to be paid/handled; and,
 - g. If applicable, the reason why estimated low monthly balance was not reached. [§3500.17(i)(1)].

37. Determine whether monthly escrow payments following settlement are within the limits of section 3500.17(c).

REAL ESTATE SETTLEMENT PROCEDURES ACT

Examination Checklist

- | | | | |
|----|--|-----|----|
| 1. | Are written loan policies in connection with federally related mortgage loans in compliance with Regulation X? | Yes | No |
| 2. | Does the institution have established operating procedures which address the requirements of Regulation X? | Yes | No |
| 3. | Are mortgage lending personnel knowledgeable of the requirements of RESPA and Regulation X? | Yes | No |

Special Information Booklet

- | | | | |
|----|--|-----|----|
| 4. | For applicable transactions, is the Special Information Booklet provided within three business days after the financial institution or broker receives or prepares a written application for a loan? | Yes | No |
|----|--|-----|----|

Good Faith Estimate

- | | | | |
|----|--|-----|----|
| 5. | Does the financial institution use the standard/required Good Faith Estimate Form (GFE)? | Yes | No |
| 6. | Is a GFE of charges for settlement services, if required, provided within three business days after an application is received or prepared? | Yes | No |
| 7. | Does the GFE appear in the exact form as in Appendix C to Regulation X? | Yes | No |
| 8. | Does the GFE contain the following required elements: | | |
| | a. (i) Interest rate expiration date? | Yes | No |
| | (ii) Settlement charges expiration date? | Yes | No |
| | (iii) Rate lock period? | Yes | No |
| | (iv) Number of days before settlement the interest rate must be locked, if applicable? | Yes | No |
| | (v) Summary of loan information? | Yes | No |
| | (vi) Escrow account information? | Yes | No |
| | (vii) Estimates for settlement charges? | Yes | No |
| | (viii) Left hand column on trade-off table completed for loan in the GFE? | Yes | No |
| | b. For all loans, are all third party fees, including those paid by the financial institution in the case of no cost loans, itemized and listed in the appropriate blocks on the second page of the GFE? | Yes | No |

- c. Did the financial institution provide a separate sheet that identifies the settlement service providers for the services listed? Yes No

Affiliated Business Arrangements

9. Does the financial institution refer borrowers to settlement service providers? Yes No
10. If the institution refers borrowers to affiliated settlement service providers, is the Affiliated Business Disclosure statement provided to each borrower as set forth in Appendix D to Part 3500? Yes No
11. Other than an attorney, credit reporting agency, or appraiser representing the lender, does the financial institution require the use of an affiliate? Yes No

Uniform Settlement Statement Form (HUD-1 and HUD-1A)

12. Does the financial institution use the current Uniform Settlement Statement (HUD-1 or HUD-1A) as appropriate? Yes No
13. Does the HUD-1 or HUD-1A contain the following:
- a. Charges properly itemized for both borrower and seller in accordance with the instructions for completion of the HUD-1 or HUD-1A? Yes No
 - b. All charges paid to one other than the lender itemized and the recipient named? Yes No
 - c. Charges required by the financial institution but paid outside of closing, itemized on the settlement statement, marked as "paid outside of closing" or "P.O.C." but not included in totals? Yes No
 - d. Where an average charge was listed for a settlement service, was the charge calculated in accordance with requirements set forth in section 3500.8(b)(2)? Yes No
14. From a review of the HUD-1 or HUD-1/A prepared in connection with each GFE reviewed, are amounts shown on the GFE the same as the fees actually paid by the borrower? Yes No
15. If a charge stated on the HUD-1/1A exceeds the charges stated on the GFE by more than the permitted tolerance, does the financial institution cure the tolerance violation by reimbursing the borrower the amount by which the tolerance was exceeded at settlement, or by delivering or placing the payment in the mail within 30 calendar days after settlement? Yes No

16. If the financial institution conducts settlement:
- a. Is the borrower, upon request, allowed to inspect the HUD-1 or HUD-1A at least one day prior to settlement? Yes No
 - b. Is the HUD-1 or HUD-1A provided to the borrower and seller at settlement? Yes No
 - c. In cases where the right to delivery is waived or the transaction is exempt, is the statement mailed as soon as possible after settlement? Yes No
17. In the case of an inadvertent or technical error on the HUD-1/1A, does the institution provide a revised HUD-1/1A to the borrower within 30 calendar days after settlement? Yes No
18. If the financial institution retains its interest in the mortgage and/or services it, is the HUD-1 or HUD-1A form retained for five years? Yes No
19. If the financial institution disposes of its interest in the mortgage and does not service the loan, is the HUD-1/1A transferred to the new asset owner with the loan file? Yes No

Mortgage Servicing Transfer Disclosure

20. Does the mortgage servicing transfer disclosure form language substantially conform to the model disclosure in Appendix MS-1 to Part 3500? Yes No
21. Does the lender provide the mortgage servicing transfer disclosure within three business days after receipt of the application? Yes No
22. Does the disclosure state whether the loan may be assigned or transferred while outstanding? Yes No

Notice to Borrower of Transfer of Mortgage Servicing

23. If the institution has transferred servicing rights, was notice to the borrower given at least 15 days prior to the transfer? Yes No
24. If the institution has received servicing rights, was notice given the borrower within 15 days after the transfer? Yes No
25. Does the notice by transferor and transferee include the following information as contained in Appendix MS-2 to Part 3500:
- a. The effective date of the transfer? Yes No

- b. The new servicer's name, address, and toll-free or collect call telephone number of the transferor servicer? Yes No
- c. A toll-free or collect call telephone number of the present servicer to answer inquiries relating to the transfer? Yes No
- d. The date on which the present servicer will cease accepting payments and the date the new servicer will begin accepting payments relating to the transferred loan? Yes No
- e. Any information concerning the effect of the transfer on the availability of terms of optional insurance and any action the borrower must take to maintain coverage? Yes No
- f. A statement that the transfer does not affect the terms or conditions of the mortgage, other than terms directly related to its servicing? Yes No
- g. A statement of the borrower's rights in connection with complaint resolution? Yes No

Responding to Borrower Inquiries

- 26. Have late fees been imposed within 60 days following a transfer of servicing or were payments treated as late when received by transferor rather than transferee? Yes No
- 27. Does the institution respond to borrower inquiries relating to servicing of RESPA covered mortgage loans and refinancings as prescribed in the regulation? Yes No

Specifically, does the institution:

- a. Provide a written response acknowledging receipt of a qualified written request from a borrower for information relating to the servicing of the loan within 20-business days? Yes No
- b. If not, has the action requested by the borrower been taken within the 20-business day period? Yes No
- c. Within 60-business days after the receipt of a qualified written request, does the institution make appropriate corrections in the account of the borrower and provide a written notification of the correction (including in the notice the name and the telephone number of a representative of the institution who can provide assistance)? Yes No

OR

Provide the borrower with a written explanation:

- i. Stating the reasons the account is correct (including the name and telephone number of a representative of the institution who can provide assistance)? Yes No

OR

- ii. Explaining why the information requested is unavailable or cannot be obtained by the institution (including the name and telephone number of a representative of the institution who can provide assistance)? Yes No

28. Does the institution provide information regarding an overdue payment to any consumer reporting agency during the sixty-day period beginning on the date the institution received any qualified written request relating to a dispute regarding the borrower's payments? Yes No

Escrow Accounts

29. Does the institution perform an escrow analysis at the creation of the escrow account? Yes No
30. Is the initial escrow statement given to the borrower at settlement within forty-five days after the escrow account is established? Yes No
31. For continuing escrow arrangements, is an annual escrow statement provided to the borrower at least once every twelve months? Yes No
32. Does the initial escrow statement itemize:
- a. Amount of monthly mortgage payment Yes No
 - b. Portion of the monthly payment being placed in escrow Yes No
 - c. Charges to be paid from the escrow account during the first 12 months Yes No
 - d. Disbursement date Yes No
 - e. Amount of cushion Yes No
33. Is the annual escrow statement provided within thirty days of the completion of the escrow account computation year? Yes No
34. Does the annual escrow statement itemize:
- a. Current mortgage payment and portion going to escrow Yes No

- b. Amount of last year's mortgage payment and portion that went to escrow
Yes No
- c. Total amount paid into the escrow account during the past computation year
Yes No
- d. Total amount paid from the escrow account during the year for taxes, insurance premiums, and other charges
Yes No
- e. Balance in the escrow account at the end of the period
Yes No
- f. Explanation of how any surplus is being handled
Yes No
- g. Explanation of how any shortage or deficiency is to be paid by the borrower
Yes No
- h. If applicable, the reason(s) why the estimated low monthly balance was not reached
Yes No
35. Are monthly escrow payments following settlement no larger than 1/12 of the amount expected to be paid for taxes, insurance premiums, and other charges in the following twelve months, plus 1/6 of that amount?
Yes No
36. Does the servicer notify the borrower at least annually of any shortage or deficiency in the escrow account?
Yes No
37. Does the institution make payments from the escrow account for taxes, insurance premiums and other charges in a timely manner as they become due?
Yes No

No Fees for RESPA Disclosures

38. a. Does the financial institution charge a fee specifically for preparing and distributing the HUD-1 forms, escrow statements or documents required under the Truth in Lending Act?
Yes No
- b. If a fee is charged for a GFE, is the fee limited to the cost of a credit report?
Yes No

Purchase of Title Insurance

39. When the financial institution owns the property being sold, does it require that title insurance is required from a particular company?
Yes No

Payment or Receipt of Referral or Unearned Fees

40. Is institution management aware of the prohibitions against payment or receipt of kickbacks and unearned fees? Yes No
41. Are federally related mortgage loan transactions referred by brokers, affiliates, or other parties? Yes No

OR

- Does the institution refer services to brokers, affiliates, or other parties? Yes No
42. If fees were paid to the institution or any parties identified, were all fees paid to the broker, affiliate, service provider, or other party consistent with all the requirements of §3500.14(g) and for goods or facilities actually furnished or services actually performed? Yes No